

DEWAN'S REPLY : Mr. Easo, I am quite dazed and bewildered at the vast variety of subjects over which you have travelled at headlong speed such as the Privy Council, High Court Judges, Munsiffs' Courts, process servers, *vakkalats* and what not. I do not know which way to turn. You must excuse me if I do not make any particular pronouncement on any particular point or group of points you have specially raised. I shall ask the Law Member what he has to say in regard to your suggestions and wait and see before I decide on the issues raised by you.

36 Administration of Civil Justice.

Mr. K. SANKARA PANIKKAR (*Member, Ambalapuzha taluk, Group II*) spoke about the difficulties caused to the litigant public by certain provisions in the *Civil Courts' Guide* and the Civil Procedure Code. Under Rule 55 of Order XXI, when a property is attached by a decree-holder but further proceedings are not taken due to laches on his part, the application for execution is rejected. This provision was not in the old Civil Procedure Code and was a new addition. The effect was that it helped the decree-debtor to defeat the decree-holder while the real object of an attachment was to prevent such conduct on the part of the decree-debtor. The attachment ceased when the application for execution was struck off the file. That enabled the decree-debtor to alienate the property.

Secondly, if a decree-holder failed, after attachment of a property, to pay either the notice fee or other dues, the application for execution was struck off the file and consequently, the attachment also ceased. That was not proper. Laches on the part of the decree-holder subsequent to attachment should not invalidate the attachment already made. It should therefore be ruled that, till the recovery of the decree debt, the attachment should be in full force and should not be affected by limitation. If that was not feasible, the attachment should be in force for a period of 6 years from the date of attachment. It should also be ruled that rejection of an execution application would not affect the attachment already made.

Under sub-section 4 of Section 47 of the Civil Procedure Code, a decree-debtor arrested on warrant could be released on bail if he intimated to the court his intention of presenting an insolvency petition within a period of one month. That provision entailed hardship on the decree-holder as he had to get relief in the Insolvency Court.

Lastly, the member prayed for provisions being made in the *Civil Courts' Guide* to the following effect :—

(i) Affidavits should not be insisted on for filing adjournment petitions.

(ii) A period of 10 days should be allowed before an application for issue of process was rejected for default in payment of process fees.

(iii) Production of copies of *chittas* should not be insisted on for attachment of immoveable property, as the parties were responsible for subsequent mistakes in Survey Numbers and area.

(iv) Production of the Sub-Registrar's encumbrance certificate should not be insisted on before a property was sold in auction. The encumbrance certificate contained the endorsement "Sub-Registrar is not responsible for the correctness" and was hardly necessary.

(v) Civil courts should be supplied with survey plans, measurement sketches and survey instruments. Under the existing practice, if a commission was appointed to ascertain the area of a piece of land or to divide it, the *Provertikar* had to be summoned and *batta* paid to him.

(vi) Copies of sale *sannads* and auction lists should be forwarded to the *Provertikars* concerned.

(vii) Applications for copies of records in appeal cases should not be rejected until after expiry of a period of 15 days.

(viii) Decree-debtors should be given a period of two months for depositing the decree debt after an immoveable property was sold in auction. That could not cause any loss to the decree-holder inasmuch as he got 5 per cent. commission on the purchase money.

(ix) Issue of copies of complaints to all defendants should not be insisted on. It would be enough to give them abstracts of complaints.

(x) The amount of *batta* for bedding, etc., to the decree-debtors arrested on warrants should be reduced. Decree-holders should be asked to deposit only boarding charges.

(xi) The power of revision and appeal in respect of small cause cases decided by Munsiffs should be vested in the District Judges having jurisdiction and not in the High Court. The rule in respect of similar cases decided by Panchayat Courts in towns was similar.

(xii) Stamp vendors should be authorised to vend stamp papers up to the value of Rs. 50. Parties were now put to inconvenience in being forced to purchase such papers from the treasuries.

(xiii) Under the existing rules, only file books of cases were preserved permanently. The judgments and decrees should also be similarly preserved.

(xiv) The rule insisting on the production of court certificates for grant of copies of records should be abrogated as causing delay.

(xv) District Courts should be empowered to hear appeals on interim orders passed in respect of cases involving a sum of above Rs. 1,000.

DEWAN'S REPLY: Mr. Sankara Panikkar, some of the subjects you have taken up in relation to the administration of justice are matters that have come up before Government in one way or other already. However, I shall have them all looked into once more and consult the Director of Registration on the suggestions you have offered regarding his department. But I do not think it will be feasible to ask Sub-Registrars to take up the responsibility for the accuracy of facts in documents that are registered in their offices.

The Assembly adjourned at 1-40 P. M. and re-assembled at 2-15 P. M.

37. Judicial Department and hardships caused to the Public.

MR. P. K. JOSEPH (*Member, Trading Classes, Kayankulam*) said that there was chronic delay in the disposal of civil and criminal suits. The public were put to great loss and hardships by various items of work being entrusted to the Division First Class Magistrates. It was necessary to establish more First Class Magistrates' Courts and more District Courts.

Delays and irregularities occurred in the execution of decrees and in the service of processes. Process servers generally gave previous intimation to the decree-debtors of the intended issue of processes. This was an evil effect of the process peons being retained in the same station for a long time. The process establishment should be frequently transferred so that every court had at least a few process servers and *amins* personally unacquainted with decree-debtors and not liable to corruption.

Depositions given by parties in courts were ordinarily not read out to them. In many cases there was reason to doubt even the correctness of the depositions taken down. The member therefore suggested that arrangements should be made for the attestation of depositions by vakils.

The rule requiring the filing of affidavits along with every adjournment application should be cancelled. A mere verification of such applications should be sufficient. In British India, even written petitions were not considered necessary for the adjournment of cases; and hence adjournment applications were not there included among interlocutory applications. Such inclusion in Travancore necessitated the affixing of half a rupee court fee stamp to each application. This should be stopped. Affidavits should, however, be filed along with petitions for satisfaction of decrees.

The policy of appointing new hands in the Judicial Department over-looking the claims of officers in service was attendant with many evils, the chief of which was that it gave room to dissatisfaction and corruption among the latter. That also accounted, to some extent, for the growing accumulation of arrears in courts.